

986739

Contract #

STATE OF UTAH CONTRACT

1. CONTRACTING PARTIES: This contract is between the following agency of the State of Utah:

Department of Natural Resources 560 Division of Oil, Gas and Mining, referred to as OWNER, and the
Agency Name Agency Code Division

following CONTRACTOR:

USMX of Utah, Inc.
Name
1560 Broadway, Suite 880
Address
Denver, Colorado 80202
City State Zip
Gordon Phair
Contact Person
303-376-2732
Phone

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Federal Tax ID#

Vendor # 44407E

Commodity Code # 91223

FI-NET Accounting Codes: Goldstrike Project

Fund	Agency	Org	Approp. Unit	Activity (Mine)	Grant Category	Project or Job
757	560	9193	--	--	--	NFGLD 09 B

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is for reclamation construction of an abandoned mine site in Washington County, Utah.
3. PROCUREMENT: This contract is entered into as a result of the procurement process on Requisition # SS8028 Sole Source, Doug Richins, Date May 15, 1998 as the approved sole source.
4. CONTRACT PERIOD: Effective date May 15, 1998. Termination date January 31, 1999, unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any) One.
5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of \$ 972,450.00 for costs authorized by this contract.
6. ATTACHMENT A: Division of Purchasing's Standard Terms and Conditions

ATTACHMENT B: SCOPE OF WORK, hereinafter the WORK, to be performed is that contained in the Drawings and Technical Specifications of the approved closure plan.

ATTACHMENT C: Division of Oil, Gas and Mining Construction Terms and Conditions.

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:

- a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
- b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Requisition # Sole Source, Douglas Richins, May 15, 1998.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

FOR THE CONTRACTOR:

ATTEST:

Kayron L. McCay
Secretary of Corporation or Witness

CONTRACTOR:

BY: J.P. Hughes

TITLE: VP Operations

TAXPAYER ID #: _____

FOR THE STATE OF UTAH:

APPROVED FOR AVAILABILITY OF FUNDS:
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

Mary Ann Wright
Mary Ann Wright, Associate Director, Mining

Lowell P. Braxton
Lowell P. Braxton, Acting Director

Carl Roberts
Carl Roberts, Budget/Accounting

APPROVED FOR EXPENDITURE:
DIVISION OF PURCHASING

DG Richins 6/16/98
Douglas G. Richins, Director of Purchasing

DIVISION OF FINANCE

CONTRACT RECEIVED AND
PROCESSED BY
DIVISION OF FINANCE

(for) Kim S. Thorne, Director of Finance

APPROVED AS TO FORM BY
ATTORNEY GENERAL'S OFFICE
DOGM Construction Contract (revised 9/10/97)
Reference: Division of Finance Form FI 84 (revised 9/96)

ATTACHMENT A
STANDARD TERMS AND CONDITIONS

1. AUTHORITY: Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended. Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the OWNER to purchase certain specified services, and other approved purchases for the OWNER.
2. CONTRACT JURISDICTION: The provisions of this contract shall be governed by the laws of the State of Utah.
3. RECORDS ADMINISTRATION: The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR for costs authorized by this contract. These records shall be retained by the CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later.
4. AUDIT OF RECORDS: The CONTRACTOR agrees to allow OWNER and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. CONFLICT OF INTEREST: CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.
6. CONTRACTOR, AN INDEPENDENT CONTRACTOR: The CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the OWNER to any agreements, settlements, liability, or understanding whatsoever, and agrees not perform any acts as agent for the OWNER, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the OWNER. The CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the OWNER for these contract services. Persons employed by the OWNER and acting under the direction of the OWNER shall not be deemed to be employees or agents of the CONTRACTOR.
7. INDEMNITY CLAUSE: The CONTRACTOR agrees to indemnify, save harmless, and release the STATE OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.
8. EQUAL OPPORTUNITY CLAUSE: The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place.
9. SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.
10. RENEGOTIATION OR MODIFICATIONS: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the parties hereto, and attached to the original signed copy of the contract.
11. DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the OWNER.

12. TERMINATION: Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with or without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. SALES TAX EXEMPTION: The OWNER'S sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this governmental entity, unless otherwise stated in the contract.

14. WARRANTY (including Year 2000): The CONTRACTOR agrees to warrant and assume responsibility for each hardware, firmware, and/or software product (hereafter called the product) that it licenses, or sells, to the OWNER under this contract. The CONTRACTOR acknowledges that the Uniform Commercial Code applies to this contract.

In general, the CONTRACTOR warrants that (1) the product will do what the salesperson said it will do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the OWNER has relied on the CONTRACTOR'S skill or judgement to consider when it advised the OWNER about the product, especially to ensure 2000 compatibility and fitness, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the OWNER has not been warned.

In general, "year 2000 compatibility and fitness" means: (1) the product warranted by the CONTRACTOR will not cease to perform before, during or after the calendar year 2000, (2) the product will not produce abnormal, invalid, and/or incorrect results before, during, or after the calendar year 2000, (3) will include, but not be limited to, date data century recognition, calculations that accommodate same century and multi-century formats, date data values that reflect century, and (4) accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations.

If problems arise, the CONTRACTOR will repair or replace (at no charge to the OWNER) the product whose noncompliance is discovered and made known to the CONTRACTOR in writing. If there is a Year 2000 problem, the CONTRACTOR agrees to immediately assign senior engineering staff to work continuously until the product problem is corrected, time being of the essence.

Nothing in this warranty will be construed to limit any rights or remedies the OWNER may otherwise have under this contract with respect to defects other than the Year 2000 performance.

DOGM Standard Terms and Conditions (revised 9/10/97)

Reference: Division of Purchasing Standard Terms and Conditions (revised 1/16/97)

End Attachment A

ATTACHMENT B
SCOPE OF WORK

SCOPE OF WORK, hereinafter the WORK, to be performed is that contained closure plan.

The CONTRACTOR agrees to furnish all labor, materials and equipment to complete the WORK as described the Drawings, Specifications, and addendums to the specifications which are hereby made a part of this CONTRACT by reference. It is understood and agreed by the parties hereto that all WORK will be performed as required in the Drawings and Specifications and will be subject to inspection and approval prior to final acceptance by the OWNER. The relationship of the CONTRACTOR to the OWNER hereunder is that of an independent CONTRACTOR.

End Attachment B

ATTACHMENT C
DIVISION OF OIL, GAS AND MINING
CONSTRUCTION TERMS AND CONDITIONS

ARTICLE 1. TIME OF COMPLETION. The WORK under this CONTRACT shall be commenced upon notice to proceed and shall be completed within 230 calendar days after date marked on registered receipt of said Notice to Proceed and no later than January 31, 1999. WORK delays caused by weather may, at the discretion of the OWNER, extend the completion date. CONTRACTOR also agrees to the liquidated damages provisions of Article 12.

ARTICLE 2. PAYMENT. OWNER will promptly pay for services performed by the CONTRACTOR. Vouchers for reimbursement of expenditures under this Agreement must be filed promptly with OWNER's Representative by the tenth day of the month following the month in which WORK has been performed. ~~OWNER will withhold from payment an amount not to exceed 10% of the total CONTRACT cost, except for Mobilization, which will have 40% withheld, until all WORK has been performed by the CONTRACTOR and is approved and accepted by OWNER.~~ *942 HSN/03*

ARTICLE 3. INDEBTEDNESS. Before final payment is made, the CONTRACTOR must submit evidence including lien waivers, satisfactory to the OWNER that all payrolls, materials bills, subcontracts and outstanding indebtedness in connection with the WORK have been paid or that arrangements have been made for their payment. Payment will be made without unnecessary delay after receipt of such evidence as mentioned above and Final Acceptance of the WORK by the OWNER.

ARTICLE 4. ADDITIONAL WORK. It is understood and agreed by the parties hereto that no money will be paid to the CONTRACTOR for any additional WORK, labor or materials, furnished unless a new CONTRACT in the form of a Change Order or a modification hereof for such additional materials or labor has been executed by OWNER and CONTRACTOR. The OWNER specifically reserves the right to modify or amend this CONTRACT and the total sum due hereunder either by enlarging or restricting the WORK through a change order.

ARTICLE 5. ACCEPTANCE. The WORK will be inspected for acceptance by the OWNER promptly upon receipt of notice from the CONTRACTOR that the WORK is complete and ready for inspection.

ARTICLE 6. DISPUTES PERTAINING TO PAYMENT FOR WORK. Any disputes which may arise respecting the value of any WORK done, or any WORK omitted, or of any ADDITIONAL WORK which CONTRACTOR may be required to perform, or respecting any other elements involved in this CONTRACT, will be decided by the Director of the Division of Oil, Gas & Mining, acting as the OWNER.

ARTICLE 7. TERMINATION OF CONTRACT

- a. If the CONTRACTOR is adjudged bankrupt or if the CONTRACTOR makes a general assignment for the benefit of CONTRACTOR'S creditors or if a receiver is appointed on account of CONTRACTOR'S insolvency, or if CONTRACTOR or any of his/her Subcontractors violates any of the provisions of this CONTRACT, or if the CONTRACTOR does not perform the WORK according to the Specifications, the OWNER may serve written notice upon CONTRACTOR of its intention to terminate the CONTRACT; and unless within ten (10) days after the serving of the notice, the violation ceases, the OWNER then may take over the WORK and at the expense of the CONTRACTOR, complete it by contract or by any other method it may deem advisable. The CONTRACTOR will be liable to the OWNER for any excess cost incurred by the OWNER and the OWNER may, without liability for so doing, take possession of and utilize in completing the WORK, such materials, appliances, paint, and any other property belonging to the CONTRACTOR as may be on the site of the WORK.
- b. OWNER may terminate this Agreement upon thirty days written notice to CONTRACTOR in the event the U.S. Department of the Interior fails to grant to OWNER sufficient funds to meet its obligations under this Agreement. In such event, CONTRACTOR will be entitled to receive just and equitable compensation for any satisfactory WORK completed up to the time of termination.

ARTICLE 8. OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNT AND MAKE APPLICATION THEREOF. The OWNER may withhold from payment to the CONTRACTOR an amount or amounts as, in the OWNER'S judgment, may be necessary to pay just claims against the CONTRACTOR or any Subcontractor for labor and services

rendered and materials furnished in and about the WORK. The OWNER in its discretion may apply the withheld amounts on the payment of such claims. In so doing the OWNER will be deemed the agent of the CONTRACTOR and payments so made by the OWNER will be considered as a payment made under the CONTRACT by the OWNER to the CONTRACTOR and the OWNER will not be liable to the CONTRACTOR for any such payments made in good faith. Such payments may be made without prior determination of the claim or claims.

ARTICLE 9. INDEPENDENT CONTRACTOR. The CONTRACTOR will be considered an independent contractor, and, as such, has no authorization, expressed or implied, to bind the State of Utah or the OWNER to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah, except as herein expressly set forth. The compensation provided for herein will be the total compensation payable hereunder by the State of Utah or the OWNER.

ARTICLE 10. LIABILITY AND INDEMNIFICATION. It is agreed that the CONTRACTOR will at all times protect and indemnify and save harmless, the State of Utah and all institutions, agencies, departments, authorities and instrumentalities of the State of Utah and any member of their governing bodies or of their boards or commissions or any of their elected or appointed officers or any of their employees or authorized volunteers, or the private landowners who have consented to reclamation construction and/or have consented to allow ingress or egress to a reclamation site, as described in the general conditions of the project specifications which are included herein by reference, from any and all claims, damages of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, including the parties hereto and their employees that may arise, occur or grow out of any acts, actions, work or other activity done by the CONTRACTOR in the performance and execution of this CONTRACT.

ARTICLE 11. SUBCONTRACTOR. No part of this CONTRACT may be sublet by the CONTRACTOR without the prior written approval of the OWNER. The CONTRACTOR and the OWNER for themselves, their heirs, successors, executors, and administrators, hereby agree to the full performance of the covenants herein contained.

ARTICLE 12. LIQUIDATED DAMAGES. In the event the CONTRACTOR fails to complete the WORK within the time agreed upon in CONTRACTOR's schedule as set forth in Article 2, or within such additional time as may have been allowed by the OWNER, there will be deducted from any moneys due or that may become due the CONTRACTOR the sum of \$781.00 per day, for each and every calendar day beyond the agreed or extended completion day, that the WORK remains uncompleted. Such sum is fixed and agreed upon by the OWNER and the CONTRACTOR as liquidated damages due the OWNER by reason of the inconvenience and added costs of administration, engineering and supervision resulting from the CONTRACTOR's default, and not as a penalty.

Permitting the CONTRACTOR to continue and finish the WORK or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, in no way operates as a waiver on the part of the OWNER of any of OWNER'S rights under the CONTRACT.

ARTICLE 13. DEFAULT: In the event of default by the CONTRACTOR, termination may be executed as described by the Termination for Default Clause of the DIVISION OF OIL, GAS AND MINING GENERAL CONDITIONS FOR ABANDONED MINE RECLAMATION PROJECTS.

ARTICLE 14. NONAPPROPRIATION OF FUNDS: Financial obligations of the OWNER payable after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted or otherwise made available. If funds are not appropriated or otherwise available to continue the payment, this contract may be terminated without penalty by giving thirty (30) days written notice.

The CONTRACTOR was selected for this contract in accordance with the State of Utah, Division of Purchasing's Regulations for the Procurement of Construction and Professional Services.

DOGM Construction Terms and Conditions (revised 11/18/97)

End Attachment C